

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:)
Van De Sluis et al.)
Serial No.: 10/567,037) Group Art Unit: 2192
Filed: February 2, 2006) Examiner: Ziaul Chowdhury
For: METHOD OF PRESENTING A) Board of Patent Appeals and
PLURALITY OF ITEMS) Interferences
Confirmation No.: 2354)

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APPEAL BRIEF UNDER 37 C.F.R. § 41.37

In support of the Notice of Appeal filed on July 13, 2010, and pursuant to 37 C.F.R. § 41.37, Appellants present this Appeal Brief in the above-cautioned application.

This is an appeal to the Board of Patent Appeals and Interferences from the Examiner's final rejection of claims 1-9 in the Final Office Action dated March 30, 2010. The appealed claims are set forth in the attached Claims Appendix.

1. Real Party in Interest

This application is assigned to KONINKLIJKE PHILIPS ELECTRONICS N.V., the real party in interest.

2. Related Appeals and Interferences

There are no other appeals or interferences that would directly affect, be directly affected, or have a bearing on the instant appeal.

3. Status of the Claims

Claims 1-9 have been rejected in the Final Office Action. The final rejection of claims 1-9 is being appealed.

4. Status of Amendments

All amendments submitted by Appellants have been entered.

5. Summary of Claimed Subject Matter¹

The present invention, as recited in independent claim 1, relates to a method of presenting a plurality of items. The method includes enabling (1) a user to select an item in a selection context. (*See Specification, p. 5, ll. 9-11, Fig. 1*). A selection context representation represents the selection context and includes at least a parameter indicating a geographical area. (*Id. at p. 5, ll. 11-12, Fig. 1*). The method also includes associating (3) the item with the selection context representation. (*Id. at p. 5, ll. 12-13*). The method also includes presenting (5) a plurality of items (32, 33, 35, 37, 39, 51, 53, 55, 63, 65, 67, 69, 71) including the item in a presentation context in dependence upon a relation between a presentation context representation representing the presentation context and the selection context representation. (*Id. at p. 5, ll. 13-16, Figs. 1, 2*). The presentation

¹ It should be explicitly noted that it is not the Appellants' intention that the currently claimed or described embodiments be limited to operation within the illustrative embodiments described below beyond what is required by the claim language. Further description of the illustrative embodiments are provided indicating portions of the claims which cover the illustrative embodiments merely for compliance with requirements of this appeal without intending to read any further interpreted limitations into the claims as presented.

context representation includes at least a parameter indicating a geographical area. (*Id.* at p. 5, ll. 16-17).

The present invention, as recited in independent claim 9, relates to an electronic device (11) including a selection means (15) for enabling a user to select an item in a selection context. (See Specification, p. 6, ll. 12-15, Fig. 2). A selection context representation represents the selection context and includes at least a parameter indicating a geographical area. (*Id.*) The electronic device (11) also includes an associating means (17) for associating the item with the selection context representation. (*Id.* at p. 6, ll. 18-20, Fig. 2). The electronic device (11) also includes a presenting means (19) for presenting a plurality of items (32, 33, 35, 37, 39, 51, 53, 55, 63, 65, 67, 69, 71) including the item in a presentation context in dependence upon a relation between a presentation context representation representing the presentation context and the selection context representation. (*Id.* at p. 7, ll. 4-8, Fig. 2). The presentation context representation includes at least a geographical area. (*Id.*)

6. Grounds of Rejection to be Reviewed on Appeal

- I. Whether claims 1-3, 6, 8, and 9 are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 6,008,806 to Nakajima et al. (hereinafter “Nakajima”) in view of U.S. Published App. No. 2002/0160817 to Salmimaa et al. (hereinafter “Salmimaa”).
- II. Whether claims 4, 5, and 7 are unpatentable under 35 U.S.C. § 103(a) over Nakajima and Salmimaa in further view of U.S. Published App. No. 2001/0019338 to Roth.

7. Argument

I. The Rejection of Claims 1-3, 6, 8, and 9 Under 35 U.S.C. § 103(a) Should Be Reversed.

A. The Examiner's Rejection

In the Final Office Action, the Examiner rejected claims 1-3, 6, 8, and 9 under 35 U.S.C. § 103(a) as unpatentable over Nakajima in view of Salmimaa. (See 3/30/10 Office Action, p. 7). The Examiner affirms this rejection in the Advisory Action. (See 6/24/10 Advisory Action, pp. 2-3).

B. The Cited Reference Do Not Disclose Or Suggest The Selection Context Representation Including At Least A Parameter Indicating A Geographical Area, As Recited In Claim 1.

Claim 1 recites, “[a] method of presenting a plurality of items, comprising the steps of: enabling a user to select an item in a selection context, a selection context representation representing the selection context, the selection context representation including at least a parameter indicating a geographical area; associating said item with said selection context representation; and presenting a plurality of items including said item in a presentation context in dependence upon a relation between a presentation context representation representing the presentation context and said selection context representation, the presentation context representation including at least a parameter indicating a geographical area.”

Nakajima relates to an operating system with extensions in which capabilities are extended for a shell of the operating system such as adding menu items to context menus for objects that are visible within an integrated system name space. (See Nakajima, abstract). Specifically, Nakajima discloses that when a user makes a request, a database is accessed to obtain configuration information about a context menu handler

which is invoked to add menu items to a context menu of an object. (See Nakajima, col. 2, l. 2-10).

Salmimaa relates to an apparatus and method for displaying a plurality of icons on the display of a mobile terminal. One or more characteristics associated with each icon are compared to one or more context values such as time of day, geographic area, or user profile characteristics. Depending upon the comparison, the icons are represented in a display format larger than other icons. (See Salmimaa, abstract).

The Examiner rejects claim 1 using Nakajima for most of the recitations, but correctly acknowledges that Nakajima fails to disclose or suggest both the recitation of "the selection context representation including at least a parameter indicating a geographic area" and the recitation of "the presentation context representation including at least a parameter indicating a geographic area," as recited in claim 1. (*See 3/30/10 Office Action*, p. 8). To cure this deficiency, the Examiner relies on Salmimaa. In the Final Office Action, the Examiner referred to two aspects of Salmimaa. The first deals with the enlargement of icons in relation to other icons in dependence on "dynamically changed information, such as a current location of the user so that the user moved to a different geographic area, different icons are enlarged on the display device." (*See Id.*, p. 5, referring to Salmimaa Abstract). The second aspect of Salmimaa to which the Examiner refers is the two display modes for the arrangement of the icons, one in rows and columns and the other on one side of the display." (*See Id.*, p. 5, referring to Salmimaa ¶ [0005]).

In a previous response, the Appellants argued that Salmimaa does not include any discussion of a selection context. The entirety of Salmimaa is directed at displaying icons based on a context value. The Examiner states this repeatedly throughout the Office Action. (*See, e.g. Id.* at pp. 5-6). The context value of Salmimaa may be weighted based on the geographical location of the device. However, what is completely missing from any discussion within Salmimaa is the discussion of a selection context. That is, neither the context value nor the display of the icons has any

relationship with a selection context. Specifically, Salmimaa discloses that the icons are received by the mobile device based on messages transmitted by entities associated with the icon. (See, e.g., Salmimaa, ¶ [0027] and [0035]- [0037]). From this discussion in Salmimaa it is clear that a selection context plays no part in the display of icons in Salmimaa.

This led to the Examiner to clarify the rejection in the Advisory Action by referring to Salmimaa's disclosure that "[t]he method includes a step of comparing one or more characteristics associated with each icon to one or more context values, such as time of day, geographic area, or user profile characteristics." (See 6/24/10 Advisory Action, p. 2, referring to Salmimaa ¶ [0009]). The Examiner also refers to Salmimaa's disclosure of a priority ordered list of context values shown in Figures 6A-6C of Salmimaa. (See 6/24/10 Advisory Action, p. 2).

The Appellants respectfully submit that the Examiner's clarified rejection suffers from the same defects as the original rejection in the Final Office Action. The Appellants believe that the fatal flaw in the Examiner's rejection is the misinterpretation of the claimed selection context. The Appellants would like to direct the Examiner's attention to MPEP § 2111.01 where it states that an Applicant can be his/her own lexicographer and that the "meaning of words used in a claim is not construed in a 'lexicographic vacuum, but in the context of the specification and drawings.'" (See MPEP § 2111.01, IV, referring to *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999)). In view of this cited portion of the MPEP, Appellants direct the Examiner's attention to the specification of the present application, which states "there is a relation between a location and *items that are selected in the location*" and "[b]y presenting a plurality of items in dependence upon a relation between *the location at the time of selecting one or more of the plurality of items* and the location at the time of presenting the plurality of items, items that are likely to be selected at the moment of presentation are accentuated." (See Specification, p. 1, l. 28 – p. 2, l. 5). This portion of the specification of the present application clearly defines what is meant by "*the selection context representation including at least a parameter*

indicating a geographical area." From this description, one of ordinary skill in the art would understand that the selection context representation comprises the user's previous selections at a certain geographical area.

In contrast, Salmimaa discloses that a user can prioritize a list of context values. (*See* Salmimaa, ¶ [0044]). In response to a user's prioritization of these context values, a ranking like the one shown in Figure 7 of Salmimaa results. (*Id.* at ¶ [0049], Fig. 7). However, there is no disclosure by Salmimaa of a "*selection context representation including at least a parameter indicating a geographical area.*" That is, Salmimaa does not keep track of past user selections and the location at which those selections were made.

The Examiner continually refers to the ability of the system of Salmina to select an icon. For example, the Examiner states that "[t]he user of the mobile terminal can SELECT any object using a conventional keypad, cursor button, stylus or the like" and "such a magnifying glass metaphor seen at the right portion of Fig. 1, can be used to SELECT a desired icon." (See 6/24/10 Advisory Action, p. 2). Thus, the Examiner has established that the Salmina system presents a user with icons that can be selected. However, this does not disclose or suggest the properly interpreted "enabling a user to select an item in a selection context, a selection context representation representing the selection context, the selection context representation including at least a parameter indicating a geographical area," as recited in claim 1. Therefore, the 35 U.S.C. § 103(a) rejections of claim 1 and its dependent claims 2, 3, and 6 should be withdrawn.

Claim 8 recites "[a] computer storage means including a program executable by a processor of enabling a programmable device to carry out a method as claimed in claim 1." Thus, it is respectfully submitted that the rejection of claim 8 should be withdrawn for at least the reasons discussed above with reference to claim 1.

Claim 9 recites "a selection means for enabling a user to select an item in a selection context, a selection context representation representing the selection context,

the selection context representation including at least a parameter indicating a geographical area." Thus, it is respectfully submitted that the rejection of claim 9 should be withdrawn for at least the reasons discussed above with reference to claim 1.

II. The Rejection of Claims 4, 5, and 7 Under 35 U.S.C. § 103(a) Should Be Reversed.

A. The Examiner's Rejection

In the Final Office Action, the Examiner rejected claims 4, 5 and 7 under 35 U.S.C. § 103(a) as unpatentable over Nakajima and Salmimaa in view of Roth. (*See* 3/30/10 Office Action, p. 12). The Examiner affirms this rejection in the Advisory Action. (*See* 6/24/10 Advisory Action, pp. 2-3).

B. Roth Fails To Cure The Deficiencies Of Nakajima and Salmimaa To Disclose Or Suggest The Selection Context Representation Including At Least A Parameter Indicating A Geographical Area, As Recited In Claim 1.

Appellants respectfully submit that Roth fails to cure the deficiencies of Salmimaa discussed above and that Nakajima, Salmimaa, and Roth, taken alone or in any combination, fail to disclose or suggest "enabling a user to select an item in a selection context, a selection context representation representing the selection context, the selection context representation including at least a parameter indicating a geographical area," as recited in claim 1. Because claims 4, 5, and 7 depend from and, therefore, contain all of the limitations of claim 1, it is respectfully submitted that the rejection of these claims should also be withdrawn.

8. Conclusion

For the reasons set forth above, Appellants respectfully request that the Board reverse the rejections of the claims by the Examiner under 35 U.S.C. § 103(a), and indicate that claims 1-9 are allowable.

Respectfully submitted,

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CLAIMS APPENDIX

1. (Previously Presented) A method of presenting a plurality of items, comprising the steps of:

enabling a user to select an item in a selection context, a selection context representation representing the selection context, the selection context representation including at least a parameter indicating a geographical area;

associating said item with said selection context representation; and

presenting a plurality of items including said item in a presentation context in dependence upon a relation between a presentation context representation representing the presentation context and said selection context representation, the presentation context representation including at least a parameter indicating a geographical area.

2. (Original) A method as claimed in claim 1, wherein the relation between said selection context representation and said presentation context representation is determined to exist if said presentation context and said selection context at least partly overlap.

3. (Original) A method as claimed in claim 1, wherein a position of said item in said presentation depends on said relation between said presentation context representation and said selection context representation.

4. (Original) A method as claimed in claim 1, wherein the presentation of the plurality of items depends on at least one of: a number of times said item has been selected in said selection context and a date of a most recent selection of said item in said selection context.

5. (Original) A method as claimed in claim 1, wherein the plurality of items are presented in an order in accordance with at least one of: a number of times each of the plurality of items has been selected and a date of a most recent selection of each of the plurality of items.

6. (Original) A method as claimed in claim 1, wherein the presentation is personalized for a certain user and the presentation depends on whether the certain user is the user that selected said item.
7. (Original) A method as claimed in claim 1, wherein both the selection context representation and the presentation context representation include a parameter indicating a geographical area and a parameter indicating a recurring time period, and determining the relation between the selection context representation and the presentation context representation comprises applying a first weight to a relation between the geographical areas and applying a second weight to a relation between the recurring time periods.
8. (Previously Presented) A storage means including a program executable by a processor of a programmable device to carry out a method as claimed in claim 1.
9. (Previously Presented) An electronic device, comprising:
 - a selection means for enabling a user to select an item in a selection context, a selection context representation representing the selection context, the selection context representation including at least a parameter indicating a geographical area;
 - an associating means for associating said item with said selection context representation; and
 - a presenting means for presenting a plurality of items including said item in a presentation context in dependence upon a relation between a presentation context representation representing the presentation context and said selection context representation, the presentation context representation including at least a geographical area.

EVIDENCE APPENDIX

No evidence has been submitted herewith or is relied upon in the present appeal.

RELATED PROCEEDINGS APPENDIX

No decisions have been rendered regarding the present appeal or any proceedings related thereto.